IN THE

Supreme Court of the United States

October Term, 1950.

No. 572.

DELTA DRILLING COMPANY, - - *Petitioners,*
SINCLAIR OIL & GAS COMPANY,
W. F. LACY,
B. M. HEATH,
GEORGE A. HOFFMAN,
A. W. WESSELMAN,
A. V. MARTENS,
J. RAY STEBBINS,
J. W. LILES,
T. M. PRYOR,
FLORENCE ARNETT,
FANNIE MOSS,
SUSAN CAREY,
T. S. ARNETT,
GEORGE R. ARNETT,
A. C. ARNETT,
WILLIBIE ARNETT,

v.

THOMAS E. ARNETT, - - - - *Respondent.*

PETITION FOR REHEARING.

To the Honorable the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your Petitioners respectfully pray for a rehearing on the Order of March 26, 1951, denying to them a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

I.

JURISDICTION.

The Petition for Certiorari was denied March 26, 1951. This petition is filed in less than fifteen (15) days thereafter under Rule 33 of the rules of this court.

II.

REASONS FOR PETITION FOR REHEARING.

1. Since the filing of the Petition for Writ of Certiorari herein, there has come to our attention a decision (not yet reported) from the Court of Appeals for the Seventh Circuit in *Packard Motor Car Co.* v. *Gem Mfg. Co.*,* decided on petition for rehearing on February 26, 1951, which is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit herein.

The Seventh Circuit, applying Rule 54(b) of the Rules of Civil Procedure, held that where the District Court directed the entry of a final judgment upon one or more but less than all of the claims presented, but did not make "an express determination that there is no just reason for delay" and "an express direction for the entry of a final judgment," the judgment was interlocutory and non-appealable because of the provision in the Rule that—

> "In the absence of such determination and direction, any order or other form of decision,

*The opinion is printed as an appendix hereto.

> however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims * * *."

We are informed by the Clerk of the Court of Appeals for the Seventh Circuit that a petition for writ of certiorari has been, or is about to be, filed from that decision of the Seventh Circuit.

In the case at bar, the Sixth Circuit held that an order entered November 22, 1948, styled "Interlocutory Order and Judgment" was a final judgment (R. 775), although it provided (R. 360) that "this cause is now continued on the undisposed of issues herein," and that the order was "interlocutory in character" and "non-appealable."

As shown by that order, other claims between the parties then before the Court were left for future determination.

Twenty-one days after that "Interlocutory" Order was entered, and before the time for any appeal therefrom had expired, the Respondent joined as defendants in the suit three other parties who were claimants to an interest in the oil and gas (R. 460, 473). Since the Respondent sought a cancellation of the mineral deeds and leases (R. 15), the Sixth Circuit properly held (R. 781):

> "This was an indivisible contract which could not be held valid in part and invalid in part."

Admittedly, in this character of case a decision as to the title to some of the defendants could not be finally made until it was made as to all.

There is a conflict between the Sixth and Seventh Circuits in the application of Rule 54(b) of the Rules of Civil Procedure. Unless that conflict is resolved, litigants will not be able to rely upon a District Court's determination that its order is "interlocutory" and "non-appealable," the application of Rule 54(b) will continue in doubt, and parties may become entrapped, as in this case, in reliance upon the District Court's determination that its order was not final.

2. In the Respondent's Reply to the Petition for Writ of Certiorari in the case at bar, he states that both the District Court and the Court of Appeals "found" that the conveyance to Ellis (a Florida resident, as was the Respondent) "was a fictitious and collusive transfer and was made for the fraudulent purpose of trying to destroy the Court's jurisdiction." That was not the holding of either Court. The Court of Appeals said (R. 781):

> "The District Court did not find that the transaction was void for fraud, but held that Ellis was not an indispensable party, and that jurisdiction was not defeated."

This is an intervening circumstance of substantial effect as required by this Court's Rule 33.

WHEREFORE, the Petitioners pray that the petition for Writ of Certiorari be re-examined and reconsidered with the view that the Writ be granted.

Respectfully submitted,

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Counsel for the Petitioners.

We hereby certify that the foregoing Petition for Rehearing is filed in good faith and not for the purpose of delay and is restricted to the grounds specified in Rule 33, paragraph 2 of this Court.

Charles G. Middleton

Leo T. Wolford